

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

STEVE R. SHELDON,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Civil Action No. 11-1128
	)	Judge Joy Flowers Conti/
SCOTT NEAL, TIMOTHY WILES,	)	Magistrate Judge Maureen P. Kelly
BYRON LOCKE, M.L. HENRY,	)	
CHRISTOPHER WALSH, JOSEPH	)	
KILLGALLON, GEORGE KUZILLA and	)	
THE COMMONWEALTH OF	)	
PENNSYLVANIA (PENNSYLVANIA	)	
STATE POLICE),	)	
Defendants.	)	[ECF No. 6]

**ORDER**

AND NOW, this 26th day of September, 2012, after the plaintiff, Steve R. Sheldon (“Plaintiff”), filed an action in the above-captioned case, and after a partial motion to dismiss [ECF No. 6] was filed by defendants, and after a Report and Recommendation was filed by the United States Magistrate Judge granting the parties until September 14, 2012, to file written objections thereto, and upon careful consideration of the objections filed by defendants which relate only to the recommendation that the § 1981 claims against the individual defendants set forth in count IV of the complaint not be dismissed, and upon independent review of the record, and upon consideration of the magistrate judge’s Report and Recommendation, this court concludes that except for the claim against M. L. Henry the objections merely restate arguments already considered and adequately addressed in the Report and Recommendation. The defendants argue that allegations in the complaint with respect to defendant Scott Neal (“Neal”) and defendant M. L.

Henry do not implicate either of them in any affirmative discriminating act or personal involvement in any such act. The court views the allegations against M. L. Henry to lack the requisite factual basis and that claim must be dismissed without prejudice under Ashcroft v. Iqbal, 556 U.S. 662 (2009), and Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007). The allegations against M. L. Henry merely refer to a telephone call during which plaintiff was told to stay and work (Compl. ¶ 26) and a telephone call during which M. L. Henry told plaintiff he had no claim (Compl. ¶¶ 33-34). Those conversations do not show a plausible interference with his contract rights and benefits. While somewhat a close question, the court concludes the allegations in the complaint against Neal are sufficient to implicate him in affirmative discriminating acts and personal involvement in such acts. (See Compl. ¶¶ 51, 56)

By reason of the objections not being sustained, except with respect to the claims against M. L. Henry in Count IV,

IT IS HEREBY ORDERED that the Partial Motion to Dismiss Plaintiff's Complaint filed by Defendants [ECF No. 6] is granted in part and denied in part.

IT IS FURTHER ORDERED that the Report and Recommendation is adopted as the opinion of this court, except that the claim against M. L. Henry set forth in Count IV is dismissed without prejudice for the reasons set forth in this order.

/s/ Joy Flowers Conti  
JOY FLOWERS CONTI  
United States District Judge

cc: Honorable Maureen P. Kelly  
United States Magistrate Judge

All Counsel of Record by electronic filing